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October 13, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, C.C. Docket 94-54, RM-8012

Dear Mr. Caton:

Herewith transmitted on behalf of Telephone and Data Systems, Inc. ("TDS") and its subsidiary United States Cellular Corporation ("USCC"), are an original and nine copies of their Reply Comments in the Notice of Proposed Rulemaking and Notice of Inquiry in the above-referenced proceedings.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Peter M. Connolly

Peter M. Connolly

Enclosures

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and Interconnection	)	C. C. Docket 94-54, RM-8012
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

REPLY COMMENTS

Telephone and Data Systems, Inc. ("TDS") and its subsidiary United States Cellular Corporation ("USCC") (collectively "TDS") hereby file their Reply Comments in the above-captioned proceeding.

Introduction

In its Notice of Proposed Rulemaking ("NPRM") in this proceeding, the FCC tentatively concluded that "equal access" requirements should be applied to cellular licensees not now subject to them. The Commission also concluded that paging, SMR, broadband PCS and narrowband PCS licensees should not be subject to such requirements. In our Comments, TDS strongly opposed the imposition of equal access requirements on any CMRS provider not now subject to such requirements.

All but a few commenters endorse the FCC's conclusions with respect to non-cellular CMRS licensees. And, though a few commenters do endorse a uniform equal access requirement for all CMRS licensees, none do so with arguments which should disturb the FCC's eminently correct conclusions that it should not now impose equal access requirements on those providers.

Moreover, it is striking that in this proceeding, which is hotly contested with respect to cellular carriers, and elicited many comments discussing that issue, that none of the parties supporting equal access have furnished data or made arguments which undermine the case against imposing equal access requirements on cellular carriers in the slightest degree. On the contrary, the weight of the evidence and argument elicited by the NPRM in this proceeding only strengthens the case against imposing such a requirement.

I. None of TDS's Arguments Have Been Refuted By Pro-Equal Access Commenters

In our Comments, TDS argued that the costs to USCC and other cellular carriers of implementing equal access would be substantial, in terms of the "hardware and software" necessary to implement equal access, the administrative expenses of balloting and pre-subscription, and the ongoing legal and administrative costs of operating in an equal access environment. Those costs constitute a formidable reason not to require equal access -- unless a countervailing public interest benefit from its imposition could be shown, which has not been done in this case.

In the past, TDS and others have argued, the courts and the FCC have only imposed equal access requirements on entities which demonstrated market power over bottleneck facilities. There has been no such demonstration in this proceeding, nor could there be.

Also, we noted that competition in the wireless industry, particularly from broadband PCS, is about to increase exponentially. At a time when the wireless industry is on the

verge of such epochal changes, the FCC should not increase regulatory constraints by mandating equal access, as competition will assure that customers have access to varied long distance services.

Moreover, we showed that mandating equal access would injure the ability to cellular carriers to provide wide local calling areas, by requiring equal access long distance interconnection within large areas now considered "local" by cellular carriers. The Commission has sought to avoid this problem by different approaches to defining the "local service area" within which equal access obligations will not apply, but none of its approaches will work. There is, we argued, an irreconcilable conflict between the public interest, which is in the largest possible local cellular calling areas, and the interest of the IXCs, which is in limiting the size of such calling areas to maximize their revenues. We also argued that the existence of such wide local calling areas has been supported, in part, by the ability of cellular carriers to contract for discounted long distance service from IXCs, a practice which would have to end if equal access were instituted.

We also demonstrated that the NPRM's "tentative conclusion" in favor of equal access is supported by unproven assumptions about the beneficial effects of equal access on network usage and the development of new services. And we pointed out that the NPRM overlooked the fact that many cellular markets are <u>already</u> subject to equal access requirements in whole or in part and that there was

evidently no data to indicate that any of the predicted benefits existed in those markets.

It is striking that virtually none of the proponents of equal access come to grips with these arguments. They do not weigh costs and benefits of equal access in any concrete, empirically verifiable way. They do not analyze the line of court and FCC authority under which equal access has been imposed in the past and demonstrate its similarity to the situation of cellular and other CMRS licensees at the present time. They utterly fail to justify equal access in light of the wireless industry's emerging competitive environment of the mid and late nineties and the next century.

With the exception of MCI, which does face the problem squarely[1] the proponents of equal access carefully avoid the fundamental issue that meaningful equal access, imposed on a LATA basis for example, will inevitably mean the end of expanded local cellular calling areas, with their concomitant benefits to consumers. As Southwestern Bell demonstrates in its comments, the end result of such a change in policies would only be a redistribution of money from cellular subscribers, who benefit from large local calling areas, to IXCs, which benefit from the classification of as many calls as possible as long distance calls.

Perhaps most importantly, none of the proponents of equal access furnishes any evidence that equal access has had its

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[1] At page 4 of its Comments, MCI acknowledges that wide cellular calling areas "should not be allowed indefinitely."

intended effects in markets where one or both cellular licensees have been subject to its requirements. In fact, as is shown by NYNEX and Southwestern Bell, both of which are subject to equal access requirements,[2] equal access has not produced lower long distance prices for their cellular customers or service innovations in markets where it is in effect and it may, in fact, have had the opposite effect.

Instead, for the most part, proponents of equal access reiterate variations on two arguments.

The first, made by most of Regional Bell Holding Companies, has been aptly characterized by the Rural Cellular Association as the "misery loves company" argument. They argue that the Modified Final Judgment subjected the RBOCs and their cellular affiliates to equal access and that therefore it is only fair, as well as being mandated by the principle of "regulatory parity," that all CMRS licensees also have to provide equal access.[3]

However, unless the FCC concludes that Section 332 of the Communications Act requires the imposition of equal access, which it should not, the fact that some CMRS licensees are subject to burdensome and unnecessary regulation is simply not a valid reason to subject all CMRS licensees to such regulation. As we have argued previously, the FCC should not interpret regulatory parity to be synonymous with an unthinking, "one size fits all"

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[2] See NYNEX Comments, pp. 4-5, Southwestern Bell Comments, pp. 23-41.

[3] See, e.g. NYNEX Comments, pp. 4-5; Bell Atlantic Comments, pp. 1-2; Pacific Bell Comments, p. 3.

uniformity, with what AT&T calls a "symmetrical regulatory scheme." We would submit that rational regulation in the public interest is more important than an illusory regulatory symmetry.

The other argument offered by proponents is that equal access will promote increased competition among interexchange carriers, thus benefiting cellular customers, by promoting increased usage, lower prices, and new services.[4] If this argument were correct, it would be very difficult to refute. But is not correct.

As we have noted previously, this argument is curiously prospective and speculative in nature. It utterly ignores the experience of markets where equal access is now offered. And, as noted above, that experience furnishes no support for this argument.

TDS's position is simple. The FCC should not consider imposing equal access obligations on cellular licensees and other CMRS providers without actual evidence from those markets in which carriers are now subject to equal access that in fact produces increased usage, lower prices, and new services.

This proceeding has given the IXC proponents of equal access a golden opportunity to make that showing. They have failed to do so. The FCC should not reward their failure by granting them the special treatment they seek.

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[4] See, e.g., AT&T Comments, pp. 3-8.

Conclusion

For the foregoing reasons and those given previously in our Comments, the FCC should not adopt the equal access requirements proposed in the NPRM.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.
UNITED STATES CELLULAR CORPORATION

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